

Sunset Public Hearing Questions for  
**Water and Wastewater Financing Board**  
Created by Section 68-221-1008, *Tennessee Code Annotated*  
(Sunset termination June 2014)

1. Provide a brief introduction to the Water and Wastewater Financing Board, including information about its purpose, statutory duties, staff and administrative attachment.

*The Wastewater Facilities Act of 1987 created a Wastewater Financing Board within the Department of Environment and Conservation. Chapter 483 of the Public Acts of 1997 changed the Board to the Water and Wastewater Financing Board and included water systems within its jurisdiction. The Board determines and ensures the financial integrity of certain water systems and wastewater facilities by effecting reasonable user rates or system efficiencies, including negotiated consolidation, of certain water systems and wastewater facilities.*

*TCA Section 68-221-1009 establishes the statutory duties of the Board to:*

- *Adopt, modify, repeal, and promulgate rules in accordance with the Uniform Administrative Procedures Act and, after due notice, to enforce rules and regulations which the Board deems necessary for proper administration;*
- *Investigate and determine the financial condition of water systems and wastewater facilities under its jurisdiction;*
- *To investigate public water systems which are considered to have excessive water loss;*
- *Effect the adoption of user rates necessary for the self-sufficient operation of certain water systems and wastewater facilities and to negotiate the consolidation of certain water systems and wastewater facilities;*
- *In the case of public water systems, investigate, with the assistance of the Department of Environment and Conservation and the Comptroller of the Treasury, and determine the financial, technical, and managerial capacity of the systems to comply with the requirements of the federal and state acts; and to require systems to take appropriate action to correct any deficiencies in such areas, including, but not limited to, changes in ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures.*

*The Board is authorized to act only as to those water systems and wastewater facilities brought before it upon recommendation of the Comptroller of the Treasury as provided in TCA Section 68-221-1010.*

*Public Acts of 2007, Chapter 86, changed the administrative attachment of the Board from the Department of Environment and Conservation to the Comptroller of the Treasury. Staff to the Board consists of:*

*Jim Arnette, Director, Division of Local Government Audit*

*Joyce Welborn, Legislative Auditor 4, Board Coordinator  
Rachel Newton, Assistant General Counsel to the Comptroller of the Treasury*

2. Provide a list of current board members and describe how membership complies with Section 68-221-1008, *Tennessee Code Annotated*. Who appoints members? Are there any vacancies on the board? If so, what steps have been taken to fill the vacancies?

*The Board consists of the Comptroller of the Treasury or his designee, who serves as Chairman, the Commissioner of the Department of Environment and Conservation or his designee, and seven members appointed by the Governor to three-year terms expiring on June 30 of the appropriate year.*

<u>Member</u>	<u>Representing</u>
<i>Ann Butterworth, Chairman</i>	<i>Comptroller of the Treasury</i>
<i>Tom Moss</i>	<i>Dept of Environment and Conservation</i>
<i>Vacant by resignation</i>	<i>Government Finance/Minority Citizens</i>
<i>Drexel Heidel</i>	<i>Active Employee/Utility Districts</i>
<i>Ben Bolton</i>	<i>Manufacturing Interests</i>
<i>Kenneth Wiggins</i>	<i>Active Employee/Municipal Water System</i>
<i>Betsy Crossley</i>	<i>Municipalities</i>
<i>Tamika Parker</i>	<i>Tennessee Environmental Council</i>
<i>Randy Wilkins</i>	<i>Utility Districts</i>

3. Does membership include a member who is sixty years of age or older? A member who is a racial minority? A member who is female?

*The Board has three (3) female members, one (1) minority member, and no members sixty or older.*

4. What per diem or travel reimbursement do members receive? How much was paid to board members during fiscal years 2011 and 2012?

*Board members are reimbursed based upon the State Comprehensive Travel Regulations, Board Member Reimbursement Rate schedule. Travel expenditures for FY 11 were \$2,858.37; for FY 12, travel expenditures were \$1,700.50.*

5. What were the board's revenues (by source) and expenditures (by object) for fiscal years 2011 and 2012?

*There are no revenues directly attributed to the Board. Expenditures relative to the Board for FY11 and FY 12 were charged to the Comptroller of the Treasury, Office of State and Local Finance. Staff to the Board was transferred to the Division of Local Government Audit in January 2012. Subsequent expenses are funded by that Division.*

6. How many times did the board meet in fiscal years 2011 and 2012, and how many members were present at each meeting?

***During FY 11, the Board held five (5) meetings with membership attendance of 7, 8, 8, 7, and 5. During FY 12, there were four (4) meetings with attendance of 7, 7, 9, and 6.***

7. Is the board subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes and public access to minutes? If so, what procedures does the board have for informing the public of its meetings, who keeps the official minutes of board meetings and what steps are taken to make the minutes available to the public?

***The Board is subject to the requirements of the Sunshine law. The Board has its own website under the general website of the Comptroller of the Treasury: <http://www.comptroller.tn.gov/WWFB>. All meeting notices are posted in advance of the meeting, usually one calendar year at a time, on that website. The minutes of the Board are maintained in the Division of Local Government Audit. Minutes are furnished on request in accordance with the Tennessee Public Records Act.***

8. What were the major accomplishments of the board during fiscal years 2011 and 2012? Specifically describe the nature and extent of the board's activities as they relate to each of the board's duties and responsibilities set out in Section 68-221-1009, *Tennessee Code Annotated*.

***In October 2010 and again in June 2012, the Board voted to adopt American Water Works Water Loss reporting format. This puts Tennessee as one of the leaders in the nation for water accountability. Although still in its "learning stage," the accountability will allow the monitoring of one of the state's most valuable resources – water. During the two-year period under review, the Board approved 51 compliance reports. This reflects that actions taken by the various utility systems, under the guidance of the Board, are in compliance with state law. Most of the other utility systems have plans in place to reach compliance. Those without plans have not yet appeared before the Board.***

9. Has the board promulgated rules as authorized at Section 68-221-1009(a)(1), *Tennessee Code Annotated*? If so please cite the reference.

***Yes, the rules are in Chapter 1740-01.***

10. What reports does the board prepare on its operations, activities and accomplishments and who receives the reports? Please attach copies of all such reports issued during fiscal years 2011 and 2012.

***Until the 2013 Legislative session, there was no statutory requirement for preparing such a report; however, the Board has consistently submitted a report to the Governor at the beginning of each calendar year. Attached is a copy of the annual reports for 2011 and 2012.***

11. How many water systems and wastewater facilities were brought before the board during fiscal years 2011 and 2012, upon recommendation of the Comptroller of the Treasury? Briefly summarize the board's orders and determinations in those cases. Were all hearings scheduled within 60 days from the receipt of the audit report as required by Section 68-221-1010, *Tennessee Code Annotated*?

***All the information included in the annual report to the Governor is done based on a calendar year, therefore, information reflected here is by calendar year. During 2011, the Board heard 54 cases, 28 status reports and 14 compliance reports. During 2012, the Board heard 34 cases, 10 status reports, and 37 compliance reports.***

***The resolution to the cases mostly involved rate increases, but also included plans involving meter change out and rate or fee restructuring, reduction of expenses, or receipt of grant funds***

***All cases were scheduled within 60 days of receipt of the audit report***

12. How many reviews of board decisions were held during fiscal years 2011 and 2012 and who conducted the hearings (the board, one or more board members, or an administrative judge)? How many decisions were reversed? Upheld? Amended?

***There were no reviews of Board decisions.***

13. How many cases did the board refer to chancery court during the last two years because facilities failed to adhere to the board's final orders? What was the outcome of those cases?

***There were no cases referred to Chancery Court.***

14. Describe the board's process for investigating and determining the financial condition of wastewater facilities.

***Upon receipt of the audited financial statements from the Division of Local Government Audit Review Team (which constitutes the referral by the Comptroller of the Treasury), the municipality is notified and a hearing date is set. Staff, sometimes with the assistance of Municipal Technical Advisory Service (MTAS), will work with the municipality to develop a plan for addressing the situation. A visit is made to meet with city staff or even the entire city council or board. A plan is developed that will eliminate the "financially distressed" or excessive water loss condition within the***

***guidelines previously established by the Board. The Board then endorses or rejects the plan as adopted by the municipality.***

15. Does the board have any policies in place to address potential conflicts of interest by board members, board employees, or other state employees who work with the board in any capacity?

***The Comptroller of the Treasury requires that the members sign conflict of interest forms. There are no policies in place regarding conflicts of interest.***

16. Describe any items related to the board that require legislative attention and your proposed legislative changes.

***There are no proposed changes or items that require legislative attention at this time.***

17. Should the board be continued? To what extent and in what ways would the absence of the board endanger the public health, safety or welfare?

***Yes, the Board should continue. The Board has addressed the “financially distressed” condition of 222 entities in its twenty-six year history. There are various statutes in the Tennessee Code Annotated which require municipalities to have sufficient rates or revenues to cover expenses, including debt payments, depreciation, operations, etc. This board is the “enforcement arm” that has authority through Chancery Court to force a municipality to comply with such statutes. There are currently 75 municipalities, counties or authorities under the jurisdiction of the Board.***

***Without the Board in place to require the utility systems to adjust rates, many would fall into serious debt issues or states of disrepair which could jeopardize the health and well-being of the citizens of Tennessee.***

18. Please list all board programs or activities that receive federal financial assistance and, therefore are required to comply with Title VI of the Civil Rights Act of 1964. Include the amount of federal funding received by program/activity.

[Federal financial assistance includes:

- (1) Grants and loans of Federal funds,
- (2) The grant or donation of Federal Property and interests in property,
- (3) The detail of Federal personnel,
- (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for

the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and

(5) Any federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

*28 C.F.R. Sec. 42.102(c)*

[The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

*28 C.F.R. Sec. 42.102(f)*

***The Board receives no federal monies, nor does the Office of the Comptroller of the Treasury. The Board operates within the general administration budget of the Division of Local Government Audit within the Office of the Comptroller of the Treasury.***

***If the board does receive federal assistance, please answer questions 19 through 26. If the board does not receive federal assistance, proceed directly to question 25.***

19. Does your board prepare a Title VI plan? If yes, please provide a copy of the most recent plan.
20. Does your board have a Title VI coordinator? If yes, please provide the Title VI coordinator's name and phone number and a brief description of his/her duties. If not, provide the name and phone number of the person responsible for dealing with Title VI issues.
21. To which state or federal agency (if any) does your board report concerning Title VI? Please describe the information your board submits to the state or federal government and/or provide a copy of the most recent report submitted.
22. Describe your board's actions to ensure that board staff and clients/program participants understand the requirements of Title VI.
23. Describe your board's actions to ensure it is meeting Title VI requirements. Specifically, describe any board monitoring or tracking activities related to Title VI, and how frequently these activities occur.
24. Please describe the board's procedures for handling Title VI complaints. Has your board received any Title VI-related complaints during the past two years? If yes,

please describe each complaint, how each complaint was investigated, and how each complaint was resolved (or, if not yet resolved, the complaint's current status).

25. Please provide a breakdown of current board staff by title, ethnicity, and gender.

***The Director is a white male, the Legal Counsel is a white female, and the Board Coordinator is a white female.***

26. Please list all board contracts, detailing each contractor, the services provided, the amount of the contract, and the ethnicity of the contractor/business owner.

***The Comptroller of the Treasury has no contracts for assistance.***